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Colorado General Assembly

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MEMORANDUM

TO: Martha Olson and Donald Anderson
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: November 17, 2017
SUBJECT: Proposed initiative measure 2017-2018 #72, concerning funding for public schools

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado Constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Colorado Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purposes of the proposed amendments to section 2 of article IX of the Colorado constitution appears to be:

1. To declare that every person residing in the state through age 21 should receive an early-childhood, primary, and secondary education in the public schools

that will enable every person to have the knowledge and learning essential to develop to his or her full potential and participate meaningfully in the civic and economic life of the community.

2. To permit state residents up to 21 years of age to receive a free early-childhood, primary, and secondary education designed to permit every student to receive equal educational opportunity.
3. To ensure that adequate state and local resources and public funding are available statewide and within each school district.
4. To remove from the general assembly any limitation, requirement, procedure, or restriction of section 3 (1)(b) of article X of the Colorado constitution and section 20 of article X of the Colorado constitution to ensuring that adequate state and local resource and public funding is available for public schools.
5. To require the Colorado general assembly to maintain statewide funding for education purposes specified in the proposed initiative as a percent of the total personal income of the residents of the state at least equivalent to the national average of percentages of statewide personal income dedicated to public education funding, and to achieve this level of funding by fiscal year 2023.
6. To give local school districts authority to implement the general assembly's directives pursuant section 2 of article IX the Colorado constitution notwithstanding and overriding any limitation, requirement, procedure, or restriction of section 3 (1)(b) of article X of the Colorado constitution and section 20 of article X of the Colorado constitution.
7. To clarify that the proposed amendments to section 2 of article IX of the Colorado constitution do not reduce or otherwise affect the mandates and requirements of section 17 of article IX of the Colorado constitution, commonly known as "Amendment 23".
8. To require the general assembly to prepare a public report every five years concerning its progress in achieving the goals and purposes of section 2 of article IX, of the Colorado constitution.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado:". To comply with this constitutional

- requirement, the word "Adopted" at the beginning of the proposed initiative should be replaced with "Enacted".
2. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
 3. What will be the effective date of the proposed initiative?
 4. The terms "assure" and "assuring" are used in the proposed initiative. If the proponents mean to make certain that something happens, it may be appropriate to use "ensure" and "ensuring" instead.
 5. With respect to subsection (1) of the proposed initiative:
 - a. What does it mean to "adequately prepare them [every person] to meet these goals"?
 - b. The proponents add language stating that "educational opportunities should be made available on a thorough, uniform, consistent, and equitable basis to all persons throughout the state." Colorado courts have interpreted the phrase "thorough" and "uniform". In what ways, if any, does the addition of the terms "consistent" and "equitable" change the existing requirement to establish and maintain a thorough and uniform system of free public education under this constitutional provision?
 - c. The proposed language declares that the purposes of the new subsection (1) of the section "are among the highest priorities entrusted by the people to the general assembly and to each local district." What does it mean for something to be "among the highest priorities" of the Colorado General Assembly and each local district?
 - d. Does "local district" used throughout the section mean a school district?
 6. With respect to subsection (2) of the proposed initiative:
 - a. What does "equal educational opportunity" mean?
 - b. By striking the language "at least three months in each year", is it your intent to remove the requirement that public schools must be open at least three months of each year? What is the effect of this change to existing law?
 7. What does it mean that assuring adequate state and local resources and public funding are available statewide is "a legislative priority"? Does the general

assembly have a duty to fund this legislative priority before funding anything else in the state budget?

8. For purposes of the state, what does "notwithstanding and overriding any limitation, requirement, procedure or restriction otherwise applicable"? Are sections 3(1)(b) and 20 of article X of the Colorado constitution void until such time that there is adequate state and local resources or does subsection (3) empower the general assembly disregard some part of those constitutional provisions as is necessary to ensure that the state has adequate funding?
9. Section (1)(b) of article X of the Colorado constitution includes the following provisions: Establishes a definition of "residential real property"; establishes the procedure for determining the residential assessment rate, commonly known as the Gallagher Amendment; establishes a non-residential assessment rate of 29%; establishes some requirements for the valuation for assessment for producing mines and lands or leaseholds and allows other elements to be defined in law; and exempts non-producing unpatented mining claims from property tax. While all of these arguably limit the general assembly's plenary power, is each one of the identified parts considered a "limitation, requirement, procedure, or restriction" that the general assembly may override?
10. Is the general assembly's authority to override a provision limited to making changes that provide revenue for local school districts? For example, would the authority in subsection (3) allow the state to increase the residential assessment rate to 15%, which would increase the property tax revenue for all local governments that levy mills?
 - a. If yes, would it be accurate to describe the measure as allowing the general assembly to make changes that increase property taxes for all local governments?
 - b. If no, is this limitation clear from the language of the proposed initiative?
11. Section 20 of article X of the Colorado constitution, also known as TABOR, includes, among other things, the prior-voter approval requirement for tax increases and multiple-fiscal year direct or indirect district debt or other financial obligations; election notice and ballot language requirements; an emergency reserve; authority for emergency taxes; fiscal year spending limits; prohibition on state property taxes; and the requirement that income be taxed at one level? Are each of these, and any other provisions in TABOR, considered a "limitation, requirement, procedure, or restriction" that the general assembly may override?

12. If the general assembly determined that it was necessary to override TABOR to provide adequate resources for schools, could it create a statewide property tax, without prior voter approval, and spend the revenue without regard to the state limitation on fiscal year spending?
13. To the extent that there are specific provisions of sections 3 (1)(b) of article X of the Colorado constitution and TABOR that you want to empower the general assembly to override, it might be easier to understand the measure if you identified the specific provisions and how the general assembly can override each one.
14. What are "adequate state and local resources"? Does the second sentence of subsection (3), which creates a minimum amount of statewide funding, define adequate state and local resources?
15. Could the general assembly suspend any or all of the provisions in sections (1)(b) and 20 of article X of the Colorado constitution forever?
16. With respect to the minimum funding requirement in subsection (3):
 - a. Does the "percentage of statewide personal income dedicated to public education" mean a state's funding for public education as a percentage of personal income in the state?
 - b. Is the percentage of statewide personal income dedicated to public education a published statistic? If so, is it determined by the U.S. Bureau of Census or U.S. Bureau of Economic Analysis.
 - c. When will these averages be known?
 - d. Presumably, the data to calculate the funding required by subsection (3) is unknown until after a fiscal year is completed. Therefore, is the funding requirement for a particular year based on a prior year's average percentage or is it based on an estimate for the fiscal year? If the latter, is the average estimated and what happens if a good faith estimate is wrong?
 - e. Is fiscal year 2023, as stated in the proposed initiative, the fiscal year 2022-23 or the fiscal year 2023-24? Please consider clarifying to specify this detail.
 - f. What funding requirement, if any, does subsection (3) create for fiscal years prior to 2023?

- g. Personal income estimates are subject to revision. What happens if subsequent revisions lead to an increased average percentage that the state did not meet for a particular year?
- 17. In subsection (4) of the proposed initiative, what is a "directive of the general assembly"? Is it anything other than a provision of law? Could it be an appropriation?
- 18. If the general assembly adopts a law without prior voter approval that doubles all school district mill levies, would this be an example a local district implementing a directive of the general assembly adopted within the scope of subsection (3)? Any other examples?
- 19. With respect to subsection (5) of the proposed initiative, what is your intent in including this language? Is it your intent that anything that the general assembly or a local district does to ensure adequate state and local resources and public funding supplements and does not supplant the existing mandates and requirements in article IX, section 17 of the Colorado constitution, commonly known as "Amendment 23", generally relating to an annual increase to statewide base per pupil funding and funding for categorical programs?
- 20. Is it your intention that the general assembly enact legislation, if necessary, to implement this proposed initiative?
- 21. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the legislative council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
 - a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
 - b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and, if so, when do you intend to do so?
 - c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the legislative council staff at BallotImpactEstimates.ga@state.co.us.

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. Before the amending clause, number each section, part, etc. that is being amended or added with a section number (e.g., SECTION 1., SECTION 2.). For example:

SECTION 1. In the constitution of the state of Colorado, **add** article XXX as follows:

2. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example, "In the constitution of the state of Colorado, **amend** section 2 of article IX as follows:".
3. When referencing an article of the Colorado constitution within the proposed initiative, include the article number. For example, with respect to subsection (5) of the proposed initiative, "SECTION 17 OF THIS ARTICLE IX."